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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL MARKO,

Defendant and Appellant.

H043118

(Santa Clara County
Super. Ct. No. C1502747)

Defendant Paul Marko pleaded no contest to various drug-related offenses and was granted probation. He now challenges some of the conditions of his probation, specifically those which: (1) require him to submit to warrantless searches of his social media accounts and provide the necessary passwords to access those accounts; (2) preclude him from entering social networking sites absent approval by a probation officer; (3) preclude him from knowingly accessing the Internet without first notifying the probation department; (4) preclude him from knowingly possessing or using any data encryption programs; and (5) require that he maintain at least the past four weeks of his Internet browsing history.

Marko raises the following arguments on appeal: (1) two of the probation conditions imposed are unreasonable under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*); (2) all of the challenged conditions are unconstitutionally overbroad as they infringe on his right to privacy, freedom of expression and freedom of association; (3) four of the

challenged conditions are unconstitutionally vague; and (4) two of the conditions, when read in conjunction, violate Marko's Fifth Amendment right against self-incrimination.

We find no merit in any of Marko's arguments and will affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Complaint, plea and sentencing

Marko was charged by complaint filed on January 29, 2015, with felony transportation of oxycodone (Health & Saf. Code, § 11352, subd. (a), count 1), felony possession of oxycodone for sale (*id.*, § 11351, count 2), misdemeanor possession of methamphetamine (*id.*, § 11377, subd. (a), count 3), and misdemeanor possession of drug paraphernalia (*id.*, § 11364, count 4). He subsequently pleaded no contest to all charges.

Prior to sentencing, defense counsel submitted written objections to several of the probation conditions set forth in the probation department's waived referral memorandum. The People filed an opposition to those objections. On December 14, 2015, the trial court placed Marko on probation and imposed, among other conditions, the following conditions of probation:¹

“[6.] You shall submit your person, place of residence, vehicle, cell phone, [and] any other electronic communication equipment to search and/or seizure by any peace officer without a warrant.

“[7, 15, 16.] The defendant shall submit all electronic devices under his control including but not limited to cell phones, laptop computers, notepads or desktop computers, to search of any text message, voicemail message, call logs, photographs, email accounts and social media accounts including but not limited to Facebook, Instagram, and MocoSpace, with or without a search warrant at any time, both day and

¹ Set forth below are the challenged conditions as recited by the trial court, which vary from those contained in the probation department's written memorandum. We retained the original numbering, but note where the trial court combined three conditions into one as well as where substantive modifications were made.

night, and provide the probation officer or peace officer with any passwords necessary to access the information specified.^[2]

“[12.] You shall not knowingly enter any social network site nor post any ads, either electronic or written, unless approved of by the probation officer. . . . [¶] . . . [¶]

“[13.] You shall not knowingly access the [I]nternet or any other online service through use of [a] computer or other electronic device at any location including your place of employment without prior notification of the probation department.^[3] . . . [¶] . . . The defendant shall not knowingly possess or use any data encryption technique or programs.

“[14.] [The defendant] shall not [knowingly] clean or delete [I]nternet browsing activity and must keep a minimum of at least four weeks of . . . history on all your electronic devices.^[4]”

B. Relevant factual background⁵

On January 13, 2015, Santa Clara Police Officer Eric Janssen was investigating narcotics crimes when he came across two postings on Craigslist, one entitled “Roxy relief no waiting” and the other entitled “Hand full of my Roxy blues (tickets) - \$30.” Janssen knew that Craigslist was often used by narcotics dealers to sell drugs and he also knew that “Roxy” was a common euphemism for oxycodone or oxycontin. Despite the different titles, the text of each post was identical: “I have tickets for the Roxy theater.

² This condition is a combination of conditions Nos. 7, 15, and 16 from the probation memorandum. We shall refer to it henceforth as “condition No. 7.”

³ The written version of this condition would have required Marko to obtain the probation department’s prior “approval,” but the trial court modified the condition by substituting “notification” for “approval.”

⁴ The trial court added the word “knowingly” to this condition, thereby inserting a scienter requirement.

⁵ By order dated February 2, 2016, we granted Marko’s request to augment the record to include the police report, which details the facts of the underlying offenses. Because Marko pleaded no contest before a preliminary hearing or trial, we derive the facts from this report.

Blues music in the 30/V or the K9 section (show times vary). I ONLY take orders 2+ and I DO NOT deliver or meet outside of my local area. Please email with serious inquiries and/or orders. \$30 per ticket and non-negotiable. My business is legit, safe, fast, and easy. For faster service you can text only no calls at [phone number] A215, Mbox, K9 V4812, Roxycodone.” Janssen searched law enforcement databases and determined the phone number listed in the ads was a voice over Internet phone number which was associated with a cell phone application, Pinger.com.⁶

Janssen used the listed phone number, indicating he was interested in “trying to get some blue 30\$.” He eventually arranged to meet with the seller on January 16, 2015, at a convenience store on Winchester Boulevard to purchase 10 oxycodone pills for \$275. The seller informed Janssen that he would be in a silver Jeep.

When officers arrived, they observed Marko sitting in the driver seat of a silver Jeep backed into a space in the convenience store’s parking lot. As the officers watched, a woman parked next to Marko’s vehicle and spoke with him briefly before entering the store. When officers detained Marko shortly thereafter, he was carrying a baggie with 10 oxycodone pills. Following his arrest, police searched Marko’s vehicle and found two more oxycodone pills, some methamphetamine, a methamphetamine pipe, 26 unidentified white pills in a prescription pill bottle, along with a mason jar containing 12.6 grams of marijuana. Marko admitted to officers he was a drug dealer and that he had arranged to sell 10 oxycodone pills to Janssen.

Officers also arrested the woman they had observed interacting with Marko in the parking lot. She admitted that she purchased two oxycontin pills from Marko two weeks earlier after seeing his Craigslist ads. On the day of her arrest, she had also arranged to meet with Marko to purchase two more oxycontin pills from him.

⁶ Per the police report, Pinger.com supports both text messaging and voice calls.

II. DISCUSSION

A. *The challenged conditions are not unreasonable*

Marko argues that two of the probation conditions imposed, specifically conditions Nos. 7 and 13, are unreasonable under *Lent*, *supra*, 15 Cal.3d 481. As to condition No. 7, he claims that there is no evidence that photographs were involved in the underlying offense and therefore allowing probation officers or peace officers access to photographs on his electronic devices is unreasonable. Condition No. 13 is unreasonable, Marko contends, because there is no evidence he knowingly used data encryption when posting on Craigslist or using Pinger.com to exchange text messages or voice calls.

1. *Standard of review and applicable legal standards*

“In granting probation, courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) This broad discretion, however, “is not without limits.” (*Id.* at p. 1121.) A condition of probation is generally “invalid [if] it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality.’ ” (*Lent*, *supra*, 15 Cal.3d at p. 486.) “This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term.” (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*).) We review the imposition of probation conditions for abuse of discretion. (*Ibid.*)

2. *Analysis*

Turning to the first prong of the *Lent* test, i.e., whether the probation condition has any relationship to the offense, we disagree that allowing a probation officer or a peace officer to search the library of photographs on Marko’s electronic devices is unreasonable.

Marko’s argument conflates reasonableness under *Lent* with the degree to which a probation condition burdens a constitutional right. As stated in a recent case involving a

similar probation condition imposed on a juvenile, “It may well be that a probation condition requiring a minor to forward all electronic communications to the probation officer or to wear a body camera would be unreasonable under *Lent*, . . . but it would be so because of the burden it imposed on the minor—not because it invaded the minor’s privacy (a constitutional concern better addressed by the overbreadth doctrine), and certainly not because it lacked a connection to preventing future criminality.” (*In re P.O.* (2016) 246 Cal.App.4th 288, 296 (*P.O.*).)

More recent cases have differed in their treatment of probation conditions like the electronic search conditions here. Marko cites *In re Erica R.* (2015) 240 Cal.App.4th 907 (*Erica R.*) in which the Court of Appeal declined to read *Olguin* as sanctioning the imposition of electronic search conditions without evidence the probationer is likely to use his or her electronic devices or social media for proscribed activities. Because there was no evidence in the record connecting the minor’s conviction for drug possession with her use of electronic devices, the court in *Erica R.*, rejected the juvenile court’s justification that “ ‘many juveniles, many minors, who are involved in drugs tend to post information about themselves and drug usage.’ ” (*Id.* at p. 913.) The court explained that “ ‘[n]ot every probation condition bearing a remote, attenuated, tangential, or diaphanous connection to future criminal conduct can be considered reasonable.’ ” (*Ibid.*)

The California Supreme Court has granted review in a case that followed the reasoning in *Erica R.* (*In re Mark C.* (2016) 244 Cal.App.4th 520, 535, rev. granted Apr. 13, 2016, S232849.) Several other cases involving electronic search conditions and juvenile defendants are also under review. At least three of these found that electronic search conditions, while not unreasonable under *Lent*, were unconstitutionally overbroad (*In re Alejandro R.* (2015) 243 Cal.App.4th 556, rev. granted Mar. 9, 2016, S232240; *In re Patrick F.* (2015) 242 Cal.App.4th 104, rev. granted Feb. 17, 2016, S231428; *In re Ricardo P.* (2015) 241 Cal.App.4th 676, rev. granted Feb. 17, 2016, S230923), and another found the electronic search condition was neither unreasonable under *Lent* nor

overbroad in light of extensive challenges the minor faced in complying with probation and avoiding re-offense. (*In re A.S.* (2016) 245 Cal.App.4th 758, rev. granted May 25, 2016, S233932.) Pending guidance from the California Supreme Court on these issues, we will address the matter before us.

Since Marko used an electronic device to arrange the sale of drugs he advertised on a Web site, it was reasonable for the trial court to give the probation officer the ability to ensure that Marko was not violating his probation by arranging drug sales, by any means, on his electronic devices—whether a cell phone, computer, or tablet. (Cf. *Erica R.*, *supra*, 240 Cal.App.4th at pp. 913-915 [electronics search condition unreasonable where minor committed misdemeanor possession of Ecstasy; there was no indication that she was involved in sales of drugs or that she had ever used an electronic device].) Although there was no evidence Marko had used photographs from his cell phone to engage in drug deals, he could readily do so in the future. Since Marko used a cell phone and the Internet to conduct drug deals, it was permissible for the trial court to impose a more “wide-ranging” (*People v. Moran* (2016) 1 Cal.5th 398, 404) electronics search condition, “for conditions of probation aimed at rehabilitating the offender need not be so strictly tied to the offender’s precise crime.” (*Id.* at pp. 404-405.)

Reasonableness under the third prong of the *Lent* test exists when a probation condition “enables a probation officer to supervise his or her charges effectively . . .” (*Olguin*, *supra*, 45 Cal.4th at pp. 380-381), even if the condition “has no relationship to the crime of which a defendant was convicted.” (*Id.* at p. 380.) Probation search conditions are also intended “ ‘to deter the commission of crimes and to protect the public, and the effectiveness of the deterrent is enhanced by the potential for random searches.’ ” (*People v. Ramos* (2004) 34 Cal.4th 494, 506.)

In *P.O.*, the offense was public intoxication, and the court found that enabling supervision of the minor’s online activity was reasonably related to monitoring her sobriety. (*P.O.*, *supra*, 246 Cal.App.4th at p. 295.) In *People v. Ebertowski* (2014) 228

Cal.App.4th 1170, 1177 (*Ebertowski*), the defendant's offense was gang related and this court found that monitoring the defendant's gang associations and activity was reasonably related to his future criminality risk.

So too here, the electronic search conditions' effectiveness as it relates to future criminality is the potential to monitor Marko's electronic activity and communications, including photographs stored on or accessible via his electronic devices, through the use of those devices and social media. (See also *People v. Lopez* (1998) 66 Cal.App.4th 615, 626 [gang condition could be imposed on a defendant with a gang affiliation as "an essential element of any probationary effort at rehabilitation because it would insulate him from a source of temptation to continue" criminal pursuits]; *In re George F.* (2016) 248 Cal.App.4th 734, 741 ["wisdom in *Olguin*, . . . is that effective supervision of a probationer deters, and is therefore related to, future criminality"].)

Based on Marko's drug offense—which involved his use of the Internet and a cell phone application—to arrange drug sales, it was sensible for the court to conclude that imposing a probation condition requiring him to turn over his electronic devices and passwords was reasonably related to future criminality. Allowing the probation officer to access this information will facilitate Marko's supervision and can deter future criminality by ensuring that he does not attempt to resume selling drugs via Craigslist or other Internet sites. Accordingly, the trial court did not abuse its discretion in imposing the electronic search conditions.

B. The probation conditions are not unconstitutionally overbroad

Marko challenges conditions Nos. 6 and 7 as overbroad as they improperly infringe on his privacy rights. He further argues that conditions Nos. 7, 12, 13 and 14 infringe on his right to be free from unreasonable searches and seizures.

1. Standard of review and applicable law

"[P]robation is a privilege and not a right, and . . . adult probationers, in preference to incarceration, validly may consent to limitations upon their constitutional rights—as,

for example, when they agree to warrantless search conditions.” (*Olguin, supra*, 45 Cal.4th at p. 384.) “A probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890 (*Sheena K.*)). “The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant’s constitutional rights” (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.) We review de novo the constitutional challenge to the probation conditions. (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143.)

2. Analysis

In *Ebertowski, supra*, 228 Cal.App.4th 1170, we upheld electronic search conditions similar to conditions Nos. 6 and 7 against an overbreadth challenge. The conditions at issue in *Ebertowski* provided: “ ‘1. The defendant shall provide all passwords to any electronic devices (including cellular phones, computers or notepads) within his or her custody or control and shall submit said devices to search at anytime [sic] without a warrant by any peace officer. [¶] 2. The defendant shall provide all passwords to any social media sites (including Facebook, Instagram and Mocospace) and shall submit said sites to search at anytime [sic] without a warrant by any peace officer.’ ” (*Id.* at p. 1173.) In upholding these conditions, we noted, “Access to all of defendant’s devices and social media accounts is the only way to see if defendant is ridding himself of his gang associations and activities, as required by the terms of his probation, or is continuing those associations and activities, in violation of his probation.” (*Id.* at p. 1175.) Consequently, “[t]he minimal invasion of his privacy that is involved in the probation officer monitoring defendant’s use of his devices and his social media accounts while defendant is on probation is outweighed by the state’s interest in protecting the public from a dangerous criminal who has been granted the privilege of probation.” (*Id.* at p. 1176.)

Marko's reliance on this court's decision in *People v. Appleton* (2016) 245 Cal.App.4th 717 is misplaced. In *Appleton*, the trial court imposed a broad electronic devices search condition even though the defendant's crime of false imprisonment had only a tenuous connection to the defendant's use of electronic devices (he met the minor victim through social media some months before the imprisonment). (*Id.* at pp. 719-720, 728-729.) Under those circumstances, it was appropriate to require the trial court to craft a narrower condition, i.e., requiring that the defendant submit his social media accounts and passwords for monitoring, or require that the defendant obtain approval from his probation officer before using social media sites and phone applications. (*Id.* at p. 727.)

In this case, however, Marko used electronic devices, including his cell phone and the Internet, to advertise and arrange for selling drugs. In the context of this case, broad access to Marko's electronic devices is essential to monitor his progress on probation and to ensure that he is not continuing to engage in the sort of criminal conduct that led to him being put on probation. Marko's suggestion that the electronic search condition be narrowed to only permit the search of specified e-mail accounts, Web sites, and social media accounts, utterly ignores the ease with which he could create new sub rosa e-mail, social media or Web site accounts, and resume his drug trade.

We now turn to Marko's challenge to conditions Nos. 7, 12, 13 and 14 as being unconstitutionally overbroad.

This court, in *People v. Pirali* (2013) 217 Cal.App.4th 1341 (*Pirali*), rejected a defendant's overbreadth challenge to similar probation conditions. The conditions at issue in that case provided: “ ‘You’re not to enter any social networking sites, nor post any ads, either electronic or written, unless approved by probation officer [*sic*]. [¶] You’re to report all personal e-mail addresses used and shall report Web sites and passwords to the probation officer within five days. [¶] . . . [¶] You are not to have access to the Internet or any other on-line service through use of your computer or other electronic device at any location without prior approval of the probation officer.

And shall not possess or use any data encryption technique program.’ ” (*Id.* at p. 1344.) In determining that these conditions were not unconstitutionally overbroad, we noted that they did not impose “a blanket prohibition[, but instead] clearly grant[] defendant the ability to access the Internet on his computer and other electronic devices so long as he obtains prior permission from his [probation] officer.” (*Id.* at p. 1350.)

Here too, the probation conditions do not impose a blanket prohibition on Marko using social media, the Internet, or electronic devices. Marko is only required to obtain his probation officer’s prior approval if he wants to use social media or post online advertisements. His other knowing use of the Internet—not involving the use of social media or online advertising—is subject only to the requirement that he notify his probation officer of that usage. In that respect, condition No. 13 is less restrictive than the comparable condition in *Pirali*, which precluded the defendant from accessing the Internet *at all* without prior approval of a probation officer.

We also disagree that the prohibition against the knowing use of data encryption would substantially infringe on his constitutional rights because e-mail accounts, electronic banking, cell phones, and many other electronic devices utilize some degree of encryption. The condition’s scienter requirement serves to restrict its scope to the use of data encryption programs by Marko to conceal his illegal activities, not to preclude him from checking his bank balance or medical test results online. The incidental data encryption employed when sending a text, e-mail, or accessing online portals for finances, health care and the like, is entirely different from knowingly using data encryption to forestall law enforcement from effectively searching an electronic device or digital media. As such, there is no constitutional overbreadth with regards to these probation conditions.

C. The challenged conditions are not unconstitutionally vague

Marko next argues that condition No. 7, which requires him to submit all electronic devices under his control to warrantless search, condition No. 12, which

requires him to not knowingly enter any social networking sites without the approval of his probation officer, and condition No. 13, which requires him to notify his probation officer when he knowingly accesses the Internet, are unconstitutionally vague. We disagree.

1. *Standard of review and applicable legal standards*

The court reviews a facial constitutional challenge to a probation condition de novo. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 880-889; *In re Shaun R.*, *supra*, 188 Cal.App.4th at p. 1143.) “Whether a term of probation is unconstitutionally vague or overbroad presents a question of law” which is reviewed de novo. (*People v. Martinez* (2014) 226 Cal.App.4th 759, 765.)

“A probation condition ‘must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,’ if it is to withstand a challenge on the ground of vagueness. [Citation.] A probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.” (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.) “In deciding the adequacy of any notice afforded those bound by a legal restriction, we are guided by the principles that ‘abstract legal commands must be applied in a specific *context*,’ and that, although not admitting of ‘mathematical certainty,’ the language used must have ‘“reasonable specificity.” ’ ” (*Ibid.*)

2. *Analysis*

Marko cites *People v. Navarro* (2016) 244 Cal.App.4th 1294 in support of his vagueness argument, but the condition at issue in that case is entirely dissimilar from those imposed here. In *Navarro*, the parole condition read, as follows: “ ‘You shall not use an electronic bulletin board system, [I]nternet relay chat channel, instant messaging, newsgroup, usergroup, peer to peer; i.e., Napster, Gnutella, Freenet, etc. . . . This would include any site-base; i.e., Hotmail, Gmail, or Yahoo e-mail, etc., which allows the user

to have the ability to surf the [I]nternet undetected.’ ” (*Id.* at p. 1301.) The Court of Appeal held this condition was unconstitutionally vague because it was imprecise. (*Id.* at p. 1302.) Under its terms, it could be read to preclude the defendant from using e-mail entirely, or perhaps it only precluded the defendant from using the Internet “undetected,” or it could be read to prohibit the defendant from using the Internet to interact with others anonymously. (*Id.* at p. 1301.)

In this case, the probation conditions imposed are not imprecise. Furthermore, Marko’s conduct underlying his conviction provides the necessary context to determine what is proscribed and what is permitted under the conditions. Marko has, through the conduct which led to his arrest and conviction, demonstrated a sufficient level of proficiency with electronic devices and the Internet to understand what conduct is prohibited. The conditions at issue here preclude Marko from knowingly accessing social media sites, including Facebook, Twitter, and Mocospace, without approval from probation and preclude Marko from knowingly using data encryption. These conditions, when read in conjunction with the electronic search condition, make clear that the intent is to prevent Marko from using electronic devices and the Internet to sell drugs as well as making it more difficult for him to hide any such illicit activity from law enforcement.

D. No Fifth Amendment violation

Finally, Marko raises Fifth Amendment claims relating to the requirement that he provide passwords to his e-mail and social media accounts (condition No. 7), as well as the requirements regarding Internet browsing data and his browsing history. We disagree that these conditions violate his Fifth Amendment right against self-incrimination.

“Constitutional issues are reviewed de novo.” (*In re J.H.* (2007) 158 Cal.App.4th 174, 183.) Thus the court reviews appellant’s Fifth Amendment challenge to his probation conditions de novo. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 880-889; *In re Shaun R.*, *supra*, 188 Cal.App.4th at p. 1143.)

“The Fifth Amendment to the United States Constitution states that ‘[n]o person . . . shall be compelled in any criminal case to be a witness against himself’ The high court has made clear that the meaning of this language cannot be divorced from the historical practices at which it was aimed, namely, the brutal inquisitorial methods of ‘ “putting the accused upon his oath and compelling him to answer questions designed to uncover uncharged offenses, without evidence from another source.” ’ [Citations.] . . . [T]he amendment prohibits the direct or derivative *criminal use* against an individual of ‘testimonial’ communications of an incriminatory nature, obtained from the person under official compulsion.” (*People v. Low* (2010) 49 Cal.4th 372, 389-390.)

The search of Marko’s electronic devices, utilizing the passwords to e-mail and social media accounts, along with the requirements imposed relating to his Internet browsing history, do not implicate his Fifth Amendment rights. It is a “settled proposition that a person may be required to produce specific documents even though they contain incriminating assertions of fact or belief because the creation of those documents was not ‘compelled’ within the meaning of the privilege [against self-incrimination].” (*United States v. Hubbell* (2000) 530 U.S. 27, 35-36.)

Moreover, even if requiring Marko to provide his passwords and maintain his Internet browsing history constitute “compelled testimonial communications” (*Fisher v. United States* (1976) 425 U.S. 391, 409), the conditions in and of themselves do not violate Marko’s Fifth Amendment right against self-incrimination because they do not authorize the use of any compelled statements in a criminal proceeding. In *Maldonado v. Superior Court* (2012) 53 Cal.4th 1112, 1127, the California Supreme Court explained, “[T]he Fifth Amendment does not provide a privilege against the compelled ‘disclosure’ of self-incriminating materials or information, but only precludes the use of such evidence in a criminal prosecution against the person from whom it was compelled.” (*Id.* at p. 1134.)

A probationer has no right to be free of self-incrimination in a probation revocation proceeding and any compelled statements would be admissible in that instance. (*Minnesota v. Murphy* (1984) 465 U.S. 420, 435, fn. 7 [“Although a revocation proceeding must comport with the requirements of due process, it is not a criminal proceeding. [Citations.] Just as there is no right to a jury trial before probation may be revoked, neither is the privilege against compelled self-incrimination available to a probationer.”].) Since the probation conditions do not purport to authorize the use of any compelled testimonial communications against Marko in a criminal proceeding, they do not violate the Fifth Amendment.

III. DISPOSITION

The order granting probation is affirmed.

Premo, Acting P.J.

WE CONCUR:

Elia, J.

Grover, J.